



September 30, 2002

**Via Overnight Mail**

Ms. Debra Regel  
U.S. EPA - Region 5  
Emergency Enforcement &  
Support Section SE-5J  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**RE: Response to General Notice of Potential Liability  
Gary Development Landfill Site, 479 North Cline Avenue, Gary, Indiana  
Cause No. 2:96CV489RL  
Our File No. 9273-2**

Dear Ms. Regel:

On behalf of our clients, William Nanini, former President and Director of Gary Development Company, Inc. (Gary Development) and Lawrence H. Hagen, Sr., former Executive Vice President, we are in receipt of your General Notice of Potential Liability letter dated September 11, 2002, which was received by Mr. Hagen on September 18, 2002 and Mr. Nanini on September 19, 2002. The September 11, 2002 letter, signed by Mr. Richard C. Karl, Chief of the Emergency Response Branch of the United States Environmental Protection Agency (USEPA) unfortunately disregards the past settlement reached between Gary Development and USEPA and the current status of the site. Specifically, USEPA and Gary Development entered into a Consent Decree on July 7, 1997, under the jurisdiction of the United States District Court, Northern District of Indiana, in the above-referenced cause, which resolved our client's liability in this matter. (See attached Consent Decree signed by Bose McKinney & Evans on July 7, 1997 and entered by the Court on July 30, 1997). Moreover, Mr. Nanini and Mr. Hagen have had no access to the site subsequent to execution of the Consent Decree.

**History of Settlement**

The Consent Decree settled the May 30, 1986 Complaint and Compliance Order against Gary Development and recognized that Gary Development did not have sufficient financial resources to comply with the April 8, 1996 Decision and Order. In compliance with the Consent Decree, Gary Development paid \$86,000 as a civil penalty, created an Irrevocable Trust entitled Gary Development Company Landfill Fund Trust (GDCLF Trust), and designated the Indiana

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Department of Environmental Management (IDEM) as the Beneficiary. (See attached Trust Agreement for Gary Development Company Landfill Trust). Simultaneously with the creation of the GDCLF Trust, Gary Development sold all of its equipment for the purposes of satisfying the penalty and paying \$40,000 into the GDCLF Trust account, held by National City Bank of Indiana as Trustee. The Trust Agreement was signed by Gary Development, the Commissioner of IDEM and National City Bank in August of 1997. The parties agreed that all monies in the GDCLF Trust would be used by IDEM for the purposes of performing landfill closures and post-closure activities.

Upon settlement of the Consent Decree and Trust Agreement, Gary Development installed heavy-duty chains and locks on the gates entering the property (the landfill operation had been previously closed on August 31, 1989) in order to protect against looters and unauthorized dumping on the site. At that time, there was no waste remaining on the site. Prior to the time that the gates were locked, Gary Development had provided full-time security guards at the site, as well as an employee during the day, to insure that nothing was dumped on the site because unauthorized dumping has been a problem in this area of Gary for many years.

Gary Development was dissolved by the State of Indiana, Office of the Secretary of State, as of April 7, 1998. I have attached for your convenience the Articles of Dissolution, as well as the Certificate of Dissolution.

On July 22, 1999, Gary Development received a letter confirming closure of the case from Mr. Joshua M. Levin, Trial Attorney Environmental Trial Defense Section, United States Department of Justice, stating that:

“[t]his letter confirms that, as determined by U.S.EPA, your client, Gary Development Company, Inc., has paid the full \$86,000 penalty and contributed \$40,000 into GDCLF Trust, as required by paragraphs 8 and 13 of the consent decree entered into July 7, 1997. The U.S.EPA has also determined that Gary Development has provided it with copies of its federal and state tax returns, and in accordance with paragraph 17 of the Consent Decree.

Accordingly, the U.S.EPA considers this action between the parties closed, subject to the “reservation of rights” and the “reopener” provisions contained in Sections IX and X of the Consent Decree”.

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We have attached Mr. Levin's letter for your convenience. Clearly, this case is considered closed by USEPA, and Mr. Nanini and Mr. Hagen have performed their duties under the Consent Decree, thus resolving the matter as it relates to them. Therefore we are at a loss to understand why the September 11<sup>th</sup> letter from USEPA was addressed to Mr. Nanini or sent to Mr. Hagen.

**Responsibility and Site Access Transferred to IDEM:**

On or about November 18, 1999, I was contacted by Mr. Matt Klein of IDEM, informing me that IDEM planned to perform surveying work at the Gary Development Landfill as part of its duties under the Trust Agreement. In further discussions with Mr. Klein on November 23, 1999 and December 9, 1999, Mr. Klein agreed that IDEM would cut the locks on the gates and install its own locks to complete the surveying work and begin working on the cap. It was also agreed that, because Mr. Nanini and Mr. Hagen would be denied access to the site and IDEM would be installing its own locks, our client would take no responsibility for the site. Importantly, no keys to IDEM's locks were ever sent to my client or to me, nor was the status of the site ever discussed with either Mr. Nanini, Mr. Hagen, myself, or any of my partners or associates at Bose McKinney & Evans LLP following IDEM's occupation of the site.

At the time IDEM took over the site, the only persons with access to the site would have been IDEM and possibly Vulcan Industries, n/k/a AMG Industries. (It is our understanding that because the former Gary Development Landfill site was landlocked, Gary Development had an easement from Vulcan. When our client occupied the property, Vulcan's road and railroad spur went through Gary Development's site, but we do not know whether this is still the case.)

**Questioning of Former Employee:**

It has come to our attention that on or about September 16, 2002, Mr. Reginald Arkell, Civil Investigator, Office of Criminal Enforcement Forensics and Training, questioned a former employee, Mr. Lawrence Hagen, Jr., (the son of Lawrence H. Hagen, Sr.), regarding daily work procedures and management of Gary Development. Specifically, we have been informed that Mr. Arkell threatened to place Mr. Hagen under arrest if he did not answer these questions about the former landfill operation. During the course of this interrogation, which seemingly threatened criminal sanctions, Mr. Hagen repeatedly stated that he was disabled and on pain medication and that he wished to speak with a court-appointed lawyer. His request was apparently derisively denied. While we do not represent Mr. Larry Hagen, Jr., it seems

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inappropriate to pursue questions about the operation of the landfill years after the requirements of the Consent Decree have been satisfied and, in the words of Mr. Levin's letter as previously quoted, "U.S. EPA considers this action between the parties closed."

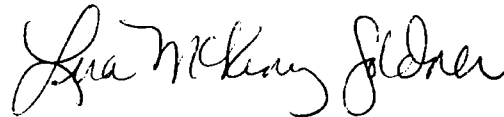
We urge you to reconsider USEPA's current actions in light of the attached information. Our client has not had access to the former Gary Development property since at least 1998, and thus, has no knowledge regarding the current status of the site. If you have further questions regarding the materials dumped on the site since that time, we suggest you pursue those concerns with IDEM or anyone else who may have had access.

It is very unfortunate that this matter has arisen, as Mr. Hagen, Sr. lives out of state and is retired and Mr. Nanini is ninety years old, lives out of state, and suffers from serious health problems. They are extremely distraught by the September 11<sup>th</sup> letter and recent events surrounding the apparent reopening of the matter they considered to be closed with the settlement and the payment of the amounts described above.

After you have had an opportunity to review this matter, I would appreciate your contacting Kathleen G. Lucas at (317) 684-5232 or me at (317) 684-5124 to discuss USEPA's actions as they relate to our client. Thank you for your cooperation.

Sincerely,

BOSE McKINNEY & EVANS LLP



Lisa McKinney Goldner

LMG/kd

cc: Richard C. Karl, Chief Emergency Response Branch  
Mary Beth Tuohy, IDEM  
William Nanini  
Lawrence Hagen, Sr.



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